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February 13, 2007

DECISION AND ORDER OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: February 10, 2006

Case Number: TSO-0356

I. Background

The individual is an applicant for a DOE security clearance. As part of the security clearance process the individual completed a Questionnaire for National Security Position (QNSP). Information contained on that QNSP prompted the local DOE security office (LSO) first to conduct a personnel security interview (PSI) with the individual and then to refer her to a board-certified psychiatrist (DOE psychiatrist) for a forensic mental evaluation. The DOE psychiatrist examined the individual in November 2005, and concluded that the individual has an illness or mental condition, *i.e.*, Borderline Personality Disorder, that causes, or may cause, a significant defect in her judgment or reliability. The DOE psychiatrist's findings are memorialized in a report which will be referred to in this Decision as Exhibit (Ex.) 6 or the Psychiatric Report.

Based on the information contained in the QNSP and the DOE psychiatrist's findings, the LSO recommended administrative review under 10 C.F.R. Part 710. In accordance with the regulations, the LSO sent the individual a letter (Notification Letter) advising her that it possessed reliable information that created a substantial doubt regarding her eligibility to hold a security clearance. 10 C.F.R. § 710.21. The LSO also advised that the derogatory information fell within the purview of one potentially disqualifying criterion

¹ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) (hereinafter referred to as Criterion).²

The individual exercised her right under the Part 710 regulations and requested an administrative review hearing upon her receipt of the Notification Letter. On February 13, 2006, the Director of the Office of Hearings and Appeals (OHA) appointed Richard Cronin the Hearing Officer in this case; I was appointed the substitute Hearing Officer on September 15, 2006. The hearing in this case was postponed twice at the individual's request because of personal and family illnesses. I finally conducted the administrative hearing three months after my appointment. At the hearing, five witnesses testified. The individual presented her own testimony and that of three witnesses; the LSO presented one witness. In addition to the testimonial evidence, the LSO submitted 12 exhibits into the record; the individual tendered none.

II. Standard of Review

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the individual, and to render a decision based on that evidence. See 10 C.F.R. § 710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. Any doubt as to the individual's access authorization eligibility shall be resolved in favor of national security." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct; the individual's age and maturity at the time of the conduct; the voluntariness of the individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. See 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. Findings of Fact

The individual had a traumatic childhood which included sexual abuse from ages six through ten. Ex. 6 at 7; Ex. 12 at 92. The sexual abuse led to problems in her relationships with men, including a period of self-described sexual promiscuity and a marriage at age 15 to a husband who was abusive and an alcoholic. Ex. 6 at 7. The individual divorced her first husband in 1976 after four years of marriage; she married her second husband in 1982. *Id*.

² Criterion H concerns information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment and reliability." 10 C.F.R. § 710.8(h).

In 1993, the individual sought mental health treatment because of emotional distress that she was suffering as the result of sexual harassment in the workplace.³ *Id.* She attended one-hour weekly psychotherapy sessions for three to four months in 1993 but abruptly terminated her psychotherapy when she suffered a severe flashback of childhood sexual abuse during a hypnotherapy session. *Id;* Ex. 12 at 91. Around the same time that she began psychotherapy, the individual's primary care physician prescribed the antidepressant, Prozac, for her. Ex. 12 at 95. The individual discontinued taking Prozac on her own because she believed that the medication made her "even more angry." *Id.* at 94.

According to the individual, her marriage to her second husband was wonderful until 1997 when her second husband became involved with another woman. Tr. at 42. To cope with her second husband's continuing infidelity, the individual consulted her primary care physician in 1999 who prescribed Wellbutrin XL ⁴ for her depression and Lorazepam for her anxiety. Ex. 6 at 3.

Sometime in 2002, the woman who was having an affair with the individual's second husband started calling the individual repeatedly at work. *Id.* The individual became so distraught at work that she could not stop crying and could not breathe. *Id.* A co-worker transported the individual to a hospital for emergency care. The individual claims that she has no memory of what happened after she "lost control" at work. *Id.* She did not attend any follow-up counseling after her hospitalization in 2002. *Id.*

One month after her 2002 hospitalization, the individual attempted suicide after her second husband began to discuss a divorce. Tr. at 112-113. The individual was hospitalized in a hospital psychiatric unit for a brief time following her suicide attempt. The individual admitted to the DOE psychiatrist that she had had fleeting suicidal thoughts at other times before her suicide attempt in 2002. Ex. 6 at 3.

In February 2004, the individual saw a counselor to help her cope with depression caused by her continuing marital problems. Ex. 4 at 2. The individual remained in therapy two times each week for one hour until June 2004. *Id.* In the fall of 2004, the individual changed counselors and received therapy two to three times a week until February 2005 when she stopped, allegedly due to pressing work demands. *Id.* It was in the fall of 2004 that the individual began to experience a number of severe dissociative episodes. *Id.* According to the individual, these episodes, characterized by disorientation as to where she was going or where she was, began occurring twice a week. *Id.* The individual blamed her dissociative episodes on the Wellbutrin XL that she had been taking for five years. *Id.* With her counselor's permission, the individual discontinued the use of Wellbutrin XL. *Id.*

The individual's second husband continued to be unfaithful to her so she initiated divorce proceedings. The individual received her divorce decree on December 29, 2005. Tr. at 46.

³ The individual was barred from discussing the details relating to the sexual harassment by a confidential settlement agreement that she entered into relating to this matter. Transcript of Hearing (Tr.) at 41.

⁴ The individual continued taking Wellbutrin XL until the fall of 2004. *Id.*

IV. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. After due deliberation, I have determined that the individual's access authorization should not be granted. I cannot find that such a grant would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings I make in support of this decision are discussed below.

A. The Derogatory Information and Associated Security Concerns

As previously noted, the LSO cites Criterion H as the sole basis for denying the individual a security clearance. To support Criterion H, the LSO relies on: (1) the DOE psychiatrist's opinion that the individual suffers from a Borderline Personality Disorder, a mental condition which the DOE psychiatrist believes causes, or may cause, a significant defect in her judgment or reliability; (2) the individual's 2002 hospitalization after an emotional collapse at work; (3) the individual's 2002 suicide attempt; (4) individual's statements to the DOE psychiatrist that she had suicidal thoughts at other times when very angry; and (5) several dissociative episodes that the individual experienced in 2004. I find that the psychiatric diagnosis and other matters cited in the Notification Letter, i.e., the individual's suicide attempt, mental collapse, suicidal ideations, and dissociative episodes all raise questions whether the individual's judgment, reliability, or trustworthiness could be impaired to the point where she could fail to safeguard classified information or act in the best interests of national security. See Guideline I (27) of the Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House.

B. Whether the Individual Suffers from a Borderline Personality Disorder

The individual disagrees with the DOE psychiatrist's diagnosis in this case. Tr. at 39, 47. She argued first that the DOE psychiatrist did not examine her long enough to diagnose her with a Borderline Personality Disorder. Second, she contended that she is being penalized for having fully disclosed details relating to her mental health during the psychiatric examination. *Id.* at 47. Third, she claimed that it was unfair for the DOE psychiatrist to label her with a mental condition simply because she was "emotional with a broken heart." *Id.* at 48.

The DOE psychiatrist who is a highly credentialed board-certified psychiatrist, clearly articulated in his Report and at the hearing why the individual meets the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, 4th edition, Text Revised (DSM-IV-TR) for Borderline Personality Disorder.⁵ Ex. 6, Tr. at 56. Unfortunately, the

⁵ The DSM-IV-TR criteria for Borderline Personality Disorder are the following: A pervasive pattern of instability of interpersonal relationships, self image and affects, and marked impulsivity beginning by early adulthood and present in a variety of contexts, as indicated by five (or more) of the following:

^{1.} frantic efforts to avoid real or imagined abandonment.

^{2.} a pattern of unstable and intense interpersonal relationships characterized by alternating between extremes of idealization and devaluation.

^{3.} identity disturbance: markedly and persistently unstable self-image or sense of self.

individual was unable to locate any of the three counselors who treated her between 1993 and 2004 and is not currently under the care of any mental health expert. She was therefore unable to present any expert testimony at the hearing to support her lay opinion on this matter. *Id.* at 40. In this case, I find that the individual's lay opinion cannot overcome that of an expert in the field of psychiatry with regard to the state of her mental health. Accordingly, I will defer to the DOE psychiatrist's opinion and find that the individual suffers from Borderline Personality Disorder.

C. Whether the Individual Has Mitigated the Criterion H Security Concerns

1. The Individual's Testimony

The individual presented very moving testimony in which she explained her futile attempts to save her marriage of 24 years and described the pain she had experienced in trying to cope with nine years of her second husband's infidelity. *Id.* at 39-54. At the hearing, she related that she has not had any suicidal ideations since 2002. *Id.* at 46. Moreover, she stated that she has not experienced any dissociative symptoms since 2004. ⁶ *Id.* at 39. She related that she realized that she needed a support system to help her cope with her marital difficulties so she sought support from some close friends and renewed ties with her church. *Id.* at 45, 54. She also stated that while she does not have a current relationship with a counselor, she talks to her pastor about various issues. *Id.* at 54. She testified that she still loves her second husband and might consider re-uniting with him only if they both received counseling. *Id.* at 47, 51.

2. Three Character Witnesses' Testimony

The individual presented the testimony of a co-worker and two friends at the hearing. The co-worker related that the individual takes her job seriously and opined that she deals well with stress on the job. *Id.* at 12, 14. Friend #1 has known the individual for two years

- 4. impulsivity in at least two areas that are potentially self-damaging (e.g. spending, sex, substance abuse, reckless driving, binge eating).
- 5. recurrent suicidal behavior, gestures, or threats, or self-mutilating behavior.
- 6. affective instability due to a marked reactivity of mood (e.g. intense episodic dysphoria, irritability, or anxiety usually lasting a few hours and only rarely more than a few days).
- 7. chronic feelings of emptiness.
- 8. inappropriate, intense anger or difficulty controlling anger (e.g. frequent displays of tempter, constant anger, recurrent physical fights).
- 9. transient, stress-related paranoid ideation or severe dissociative symptoms.

The DOE psychiatrist found that the individual met Criteria 1, 2, 4, 6, 7, and 8 above. Ex. 6.

The individual attributed her lack of symptoms in this regard to her cessation of Wellbutrin XL. At the hearing, the DOE psychiatrist convincingly explained that dissociative symptoms are not among the main known side effects of Wellbutrin XL and that if they were side effects of the medication they would have occurred earlier in treatment, *e.g.* within the first month of taking the medication. Finally, the DOE psychiatrist noted that any such side effect might occur if the medication were taken in high doses but in this case the individual never took high doses of Wellbutrin XL.

and testified that the individual is handling her divorce well. *Id.* at 18. She also related that the individual's mother recently died and that the individual is also handling the stress associated with her mother's passing in an appropriate manner. *Id.* at 20. Friend #1 explained that the individual is relying heavily on her faith to cope with these stressful events. *Id.* at 22.

Friend #2 provided more probative testimony than the other two character witnesses. Friend #2 met the individual through their mutual ex-husbands eight years ago and they currently have daily contact. *Id.* at 24-25, 30. She testified that she has observed the individual during periods of severe stress, including the times when the individual had a mental break-down during her marriage and when she attempted suicide. *Id.* at 25, 31. She explained that it was devastating for the individual to find out that her second husband "was cheating" on her. *Id.* at 26. She added that in the individual's (and her own) culture, women cater to men, give up their friends, do whatever their husbands ask of them, and concentrate their whole life on their husband and children. *Id.* at 33-35. She opined that it "takes a strong person to say I love him so much that I'll let him make the final decision about who he loves." *Id.* at 28. She related that the individual did not "flip out when her divorce was final" and was not vengeful. *Id.* at 35. Friend #2 opined that the individual's divorce has had a positive impact on her in that she is now more self-confident. *Id.* at 33. Friend #2 confirmed that the individual relies on her friends and church as her network of support. *Id.* at 32, 35.

3. The DOE Psychiatrist's Testimony

The DOE psychiatrist remained in the hearing room and listened to the testimony of all the witnesses before testifying himself. He first related that he believes that the individual has matured and learned from her experiences with her second husband. *Id.* at 62. He opined that the divorce is a healthy step for the individual. *Id.* at 70. He noted that the individual handled the stress associated with representing herself at the hearing very well. *Id.* at 72. He also found it positive that the individual has some strong friendships, is involved with her church community, and has a strong faith. *Id.*

Counterbalanced against these positive factors are the following matters of concern. According to the DOE psychiatrist, the individual has more problems than the average person and therefore needs professionals to help her with her problems, not just her good friends. *Id.* at 81. The DOE psychiatrist also testified that the dissociative episodes⁷ that the individual experienced in 2004 are typically in the profile of someone who was a victim of sexual abuse at a young age. *Id.* at 58. Similarly, he opined that the flashbacks that the individual experienced in 1993 during psychotherapy are common in victims of sexual abuse. *Id.* He opined that the individual's history of sexual abuse is at the root of her problems and that she is making slow progress with it. *Id.* at 59, 61. He explained that the individual's history of being betrayed by men whom she trusted causes her to react in an especially traumatic way when "things go bad" in her relationships with men. *Id.* at 61. He stated that any future relationship with a man, followed by a breakup, might precipitate dissociative episodes and suicidality. *Id.* at 61. He concluded his testimony by

⁷ The DOE psychiatrist explained that dissociative episodes are like a protective mechanism that humans have that allow them to disconnect from very painful memories and emotions. *Id.* at 58.

opining that the individual is at medium risk for experiencing a lapse in judgment in the future because of her Borderline Personality Disorder. *Id.* at 62.

4. Hearing Officer Evaluation of Evidence

I was very impressed by the professionalism that the individual exhibited while representing herself at the hearing. She asked insightful questions and displayed remarkable honesty in addressing matters that had caused her considerable pain in the past. Her demeanor at the hearing suggested a person who was in control of her emotions and confident of her abilities.

The individual convinced me through her own testimony and that of her three character witnesses that she has devoted friends who are helping her grapple with life issues and stressors, that she has a deep faith which is a source of strength for her, and that she is very involved with her church community. Based on my evaluation of the individual's deportment and the testimony at the hearing, I found that the individual has coped well with stress associated with three recent events in her life: her divorce, her mother's death, and the administrative review proceeding. In reviewing the evidence in this case, I determined that the individual demonstrated considerable strength and fortitude in initiating divorce proceedings against her second husband and in following through on the divorce. The individual and Friend #2 further convinced me that the divorce has had a positive impact on the individual, increasing her self-esteem.

Despite all these positive factors, there remain some factors that do not augur in the individual's favor. First, the individual is not currently receiving any professional counseling. On this matter, the DOE psychiatrist convinced me that the root of the individual's problems lies in her history of sexual abuse. It seems reasonable to me that the individual might benefit from some therapy to address the underlying source of her problems. Second, based on the DOE psychiatrist's testimony, I found that the individual might manifest some significant symptoms of her mental condition in the future. Specifically, the DOE psychiatrist predicted that if the individual enters into a stressful relationship with a man in the future, she might experience dissociative episodes and suicide ideations. Given the individual's age, I found that it is likely that she might become involved with a man in the future. In fact, since the individual has not discounted reuniting with her second husband, a man for whom she still professes love despite his past conduct, she might find herself in a relationship with him again. Third, I accorded considerable weight to the DOE psychiatrist's opinion that there is a medium risk that the individual will experience a significant lapse in judgment in the future. In the end, I found that this risk is an unacceptable one.

Based on all the foregoing, I find that the negative factors in this case outweigh the positive ones. For these reasons, I find that the individual has not mitigated the security concerns associated with Criterion H.

V. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criterion H. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to mitigate the security concerns advanced by the LSO under Criterion H. I therefore cannot find that granting the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28

Ann S. Augustyn Hearing Officer Office of Hearings and Appeals

Date: February 13, 2007